

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

April 25, 2008

Ref: 06od-055

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

OAHU

Consent to Assign Homestead Lease No. 45, Moses Kapuhilani Takemoto, Assignor, to Anthony Mark Lakana Takemoto, Margaret K. Maiava, Barbara N. Preston, Assignees; Margaret K. Maiava, Assignor, to Chastity Tuai Kanoa Cox, Assignee, Hauula, Koolauloa, Oahu; TMK (1) 5-4-008:016.

APPLICANT:

A. Assignor
Moses Kapuhilani Takemoto

Assignees

1. Anthony Mark Lakana Takemoto, husband of Kathleen M. Takemoto, whose address is P.O. Box 884, Kahuku, Hawaii 96731.
2. Margaret K. Maiava, wife of Roywarner S. Maiava, whose address is 54-280 Kawaipuna Place, Hauula, Hawaii 96717.
3. Barbara N. Preston, wife of Robert V. Preston, whose address is 54-115 Hauula Park Place, Hauula, Hawaii 96717.

B. Assignor (Upon approval of A above)
Margaret K. Maiava

Assignee

1. Chastity Tuai Kanoa Cox, wife of Patrick N. Cox, whose address is 91-1850 Park Row, Ewa Beach, Hawaii 96706

LEGAL REFERENCE:

Section 171-99(e), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Hauula situated at Hauula, Koolauloa, Oahu, identified by Tax Map Key: (1) 5-4-008:016, as shown on the attached map labeled Exhibit A.

AREA:

0.609 acre, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES _____ NO
 X

CHARACTER OF USE:

Homestead purposes.

TERM OF LEASE:

999 years, commencing on December 2, 1938 and expiring on December 1, 2937.

ANNUAL RENTAL:

Not applicable.

CONSIDERATION:

Not applicable.

RECOMMENDED PREMIUM:

Not applicable as the lease does not allow for a premium.

DCCA VERIFICATION:

Assignor/Assignee as lessees are not required to register with DCCA.

BACKGROUND:

On March 3, 1942, Homestead Lease (HL) No. 45 was issued to Mrs. Mary Kapuna Takemoto for a term of 999 years commencing from December 2, 1938. Conditions of the HL included, among others, that the lessee shall maintain his or her home upon the

premises, and that the lessee shall not, except as provided by law, assign, mortgage, or transfer the HL. A copy of HL 45 is attached as Exhibit B.

According to the Order Granting Petition for Determination of Heirs of the Estate of Mary Kapuna Takemoto, dated May 10, 2007 (P. No. 07-1-0085), Mrs. Takemoto died on February 9, 1958. According to Section 171-99(e), Hawaii Revised Statutes (HRS) (see Exhibit C) which governed the succession to a HL upon the death of a HL lessee, Mrs. Takemoto's husband, Tatsuo James Takemoto, became the lessee of HL 45 when she died in 1958. Later, Tatsuo James Takemoto died on August 16, 1987, and he was survived by five children, as noted on the Order Granting Petition for Determination of Heirs of the Estate of Tatsuo James Takemoto, dated May 10, 2007 (P. No. 07-1-0084). The names of the children, and date of death (if applicable) are as follows:

<u>Name</u>	<u>Date of Death (if applicable)</u>
Thelma Takemoto Kanoa	May 9, 1994
Joachim R. Takemoto	February 4, 1999
William C. Takemoto	February 6, 2004
Harold L. Takemoto	December 14, 2006
Moses K. Takemoto	

Note: Another child, Pauline Takemoto Ili, pre-deceased her father, Tatsuo James Takemoto, on January 10, 1971.

Act 166, Session Laws of Hawaii 2000, became effective on June 6, 2000. Act 166 changed the way an interest in a HL could be transferred. Prior to the effective date of Act 166, HRS section 171-99(e) had set forth a detailed order of descent for succession to the 999-year homestead leases. The new law amended HRS section 171-99(e) to allow a lessee to convey, devise, or bequest to any member(s) of the lessee's family, as "family" was defined in the new law, or to pass the HL on by intestate succession. The current version of the law governing HL is attached as Exhibit D.

Despite the change in the law brought about by Act 166, Moses Takemoto, through his attorney, believing that he is the sole surviving child and thus the only lawful successor to HL 45, now requests the Board's consent to assignment of one-fourth of his claimed 100% interest to Anthony Takemoto (nephew, son of Harold L. Takemoto) and one-fourth of his interest to Barbara Preston (niece, daughter of William C. Takemoto). Further, Moses Takemoto wants to transfer the remaining one-half of his interest to Margaret Maiava (niece, daughter of Pauline Takemoto Ili). If the Board approves this request, Margaret Maiava then will assign half of her interest to Chastity Tuai Kanoa Cox (niece, granddaughter of Thelma Takemoto Kanoa). By this scenario, each of the proposed assignees will hold a one-fourth interest in HL 45.

DISCUSSION:

The subject request triggered a need for a determination of the effect of Act 166 on

existing tenants holding an interest in a HL. Staff received advice letters from the Department of the Attorney General. Upon the effective date of Act 166, the statutory (not common law) joint tenancies in homestead leases were severed and each co-tenant acquired the ability to pass on that co-tenant's equal fractional share by conveyance, devise, or bequest to a "family" (as defined in the statute) member, or by intestate succession, with the prior approval of the Board of Land and Natural Resources.

Therefore, according to the Department of the Attorney General, in the case of HL 45, on June 6, 2000, Act 166 severed the statutory joint tenancy of the living children of Mary Kapuna Takemoto, and each acquired the ability to pass on his or her share in the homestead lease by conveyance, devise, or bequest to "family" members, as "family" is defined in HRS section 171-99(e), or by intestate succession, with the prior approval of the Board.

Separate and apart from any action by the Land Board (and without regard to any opinion from the Department of the Attorney General), Moses Takemoto and the proposed assignees, through their attorneys, obtained an eviction order against Kay Takemoto (widow of William C. Takemoto) et al in July 2007. The court order granting the motion found that Moses Takemoto is the sole surviving lessee under HL 45, and as the sole lessee, Moses was entitled to an order removing the defendants from the premises. The court's finding that Moses Takemoto is the sole lessee under HL 45 is contrary to the legal advice received from the Department of the Attorney General, which concluded that the heirs of Harold L. Takemoto and William C. Takemoto each acquired the right to a one-third interest in HL 45 because Harold and William both passed away after the effective date of Act 166. Therefore, Moses Takemoto holds only a one-third interest in HL 45. The Department of the Attorney General has also advised staff that the judgment in the suit is not binding upon the State of Hawaii.

Staff has no objection to the subject request of Moses Takemoto to assign his interest in HL 45; and if that assignment is approved, a subsequent request by Margaret Maiava to assign one-half of her interest to Chastity Cox. However, Moses Takemoto has only a one-third interest in HL 45, so the assignments apply only to this one-third interest.

None of the proposed Assignees have had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Staff did not solicit comments from other agencies, as there is no change to the activity on the premises.

RECOMMENDATION: That the Board

- A. Consent to the assignment of a one-third interest in Homestead Lease No. 45 from Moses Kapuhilani Takemoto, as Assignor, to Anthony Mark Lakana Takemoto one-twelfth (1/12th), Barbara N. Preston one-twelfth (1/12th), Margaret K. Maiava

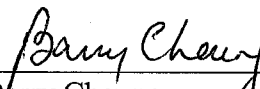
one-sixth (1/6th), as Assignees, subject to the following:

1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

B. Consent to the assignment of a one-twelfth (1/12th) interest in Homestead Lease No. 45 from Margaret K. Maiava, as Assignor, to Chastity Tuai Kanoa Cox, as Assignee, subject to the following:

1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
2. Review and approval by the Department of the Attorney General; and
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

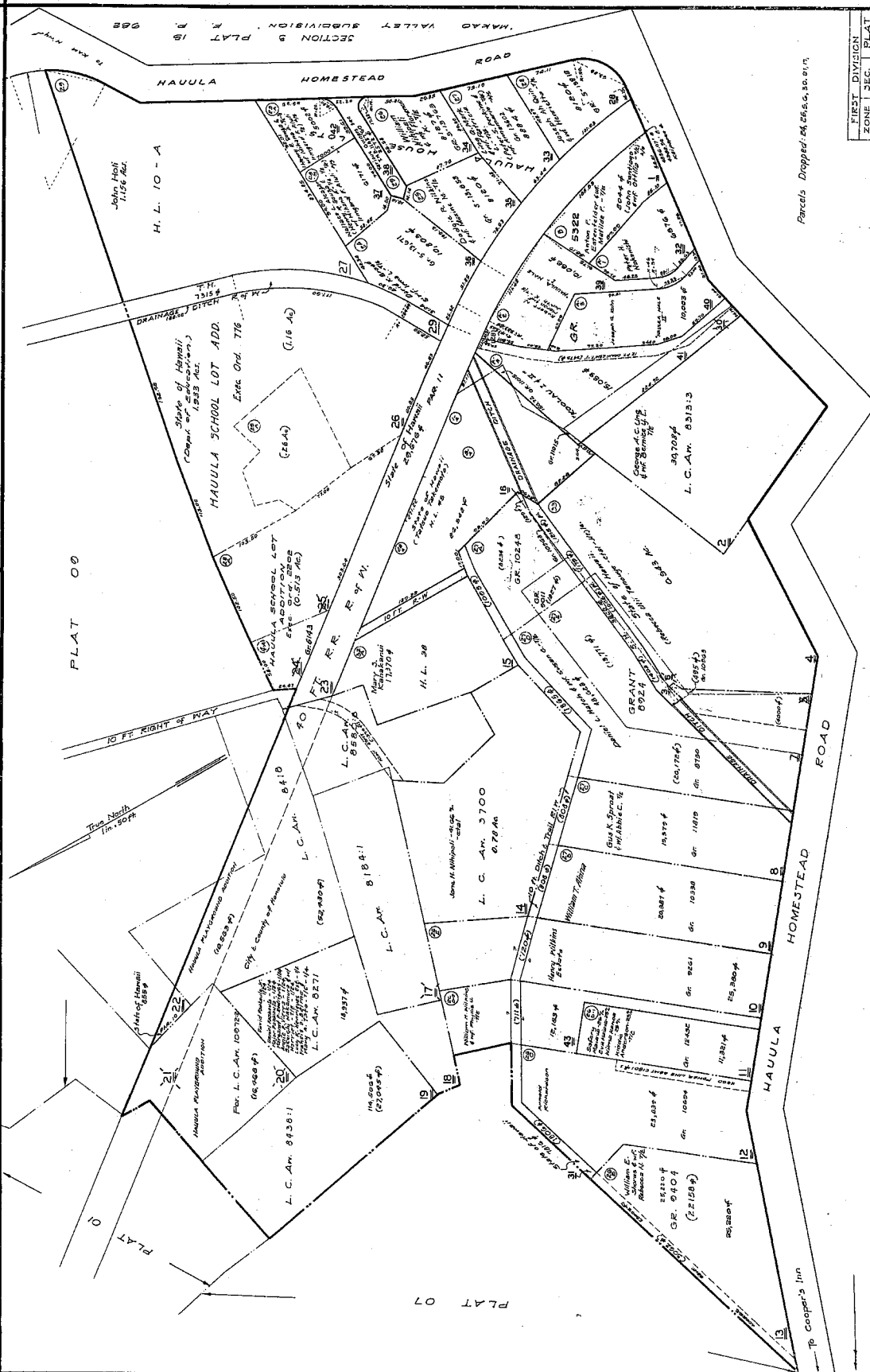


Barry Cheung
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson



Subject Location

FOR. HAULA HMSTDS, KOOLAULOA, OAHU

OFFICE OF THE
COMMISSIONER OF PUBLIC LANDS
TERRITORIAL OFFICE BUILDING
HONOLULU

TERRITORY OF HAWAII

HOMESTEAD LEASE NO. 45

WHEREAS, (MRS.) MARY KAPUNA TAKEMOTO of Hauula
(City and) County of Honolulu, Territory of Hawaii, hereinafter called the LESSEE which
shall include any and all successors to her rights hereunder, has become entitled to a
Homestead Lease of that certain land designated as Lots No. 1A, 3A, 28A Sec. 2 Government Survey
Registered Map No. 2721, situated at Hauula (City and) County of Honolulu,
Territory of Hawaii, by the performance of the stipulations and conditions contained in Certificate of
Occupation No. 98 and the provisions of all laws and rules and regulations applicable thereto,
and by applying for this Homestead Lease and paying a fee of Five Dollars, (\$5.00) within the time
required by law;

NOW THEREFORE, I, the undersigned, Governor of the Territory of Hawaii, in consideration of the
premises and of the stipulations and conditions herein contained, to be observed and performed by the Lessee,
do hereby demise and lease to the Lessee said land, more particularly described on the second page hereof,
for the term of 999 years, beginning with the 2nd day of December, 1938,
upon and subject to the following stipulations and conditions and the provisions of all applicable laws and
rules and regulations;

The Lessee shall continuously maintain his or her home upon said land;

The Lessee shall pay the taxes assessed upon said land within sixty (60) days after the same are
delinquent;

The Lessee shall keep said land substantially free from obnoxious weed pests;

The Lessee shall have within two years from the beginning of this lease, and thereafter maintain in
good growing condition, on so much of said land as is not kept under cultivation an average of not less
than ten (10) timber, shade or fruit trees per acre;

The Lessee shall not, except as specifically provided by law, in any way, directly or indirectly, sell,
assign, convey, lease, mortgage or otherwise transfer or dispose of this Homestead Lease or any rights
hereunder, or said land or any part thereof or interest therein or control thereof, or contract so to do;

Neither this Homestead Lease nor the interest of the Lessee herein, nor the buildings, improve-
ments or crops at any time placed or growing upon said land shall be subject to attachment, levy, or sale
upon execution, or upon any process in bankruptcy, or upon any process issuing from any court;

The Commissioner of Public Lands, his agents and representatives may at all reasonable time enter
and examine said land and the improvements thereon;

In case of noncompliance with any of the above stipulations or conditions, said Commissioner may,
with the approval of the Governor, with or without legal process, notice, demand, or previous entry, take
possession of said land and thereby determine the estate hereby created.

EXHIBIT "B"

Lot 1-A
Hauula Homestead Water Lots
Hauula, Koolauloa, Oahu

Being portion of the Government (Crown) Land of Hauula and portions of Grant 5322 to B. M. Aubrey conveyed to the Territory of Hawaii by H.V.F. Turner by deed dated July 7, 1941 and recorded in Book 1675 on pages 347-354.

Beginning at the north corner of this lot, the north-east corner of Lot 3-A and on the southwest side of the Kahuku Plantation Company's 40 foot railroad right-of-way, the coordinates of said point of beginning referred to Government Survey Triangulation Station "Kaipapau" being 4441.86 feet South and 4777.76 feet East, as shown on Government Survey Registered Map 2721, and running by azimuths measured clockwise from True South:-

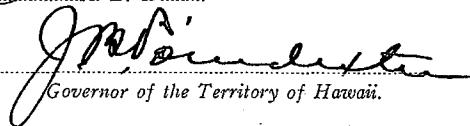
1. 321° 55' 94.07 feet along the southwest side of the Kahuku Plantation Company's 40 foot railroad right-of-way;
2. Thence still along same on a curve to the right with a radius of 1473.55 feet, the direct azimuth and distance being: 322° 54' 37" 51.11 feet;
3. 71° 03' 150.72 feet along fence along land owned by H.V.F. Turner, to a pipe;
4. 350° 47' 30" 3.64 feet along same;
5. 66° 50' 19.67 feet along L.C. Aw. 8313 Apana 3 to Kamoiliili, to a pipe;
6. 167° 35' 82.39 feet along Lot 33, Hauula Homesteads to a pipe;
7. 246° 37' 30" 24.90 feet across Drain Ditch to a pipe;
8. 164° 30' 5.96 feet along government land to a pipe;
9. 260° 05' 77.00 feet along Lot 3-A, Hauula Homestead Water Lots;

10. 163° 45' 61.20 feet along same;
11. 231° 55' 11.35 feet along same to the point of
beginning.

AREA 13,374 SQUARE FEET


Excepting and reserving therefrom the Drain Ditches as
shown on plan attached hereto and made a part hereof.

IN WITNESS WHEREOF, I, the undersigned, Governor of the Territory of Hawaii, upon the recom-
mendation of the Commissioner of Public Lands, have hereunto set my hand and caused the Great Seal of
the Territory of Hawaii to be hereto affixed this 3rd day of March A. D. 1942,
and the said Lessee has signed these presents, by way of acceptance of the stipulations and conditions in
this lease set forth, this 2nd day of March A. D. 1942.


Governor of the Territory of Hawaii.

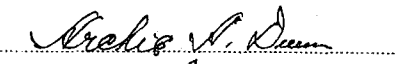
Mrs. Mary Kapuna Takemoto
Lessee.

Countersigned.


Commissioner of Public Lands.

TERRITORY OF HAWAII
COUNTY OF Honolulu } SS.

On this 2nd day of March A. D. 1942, before me personally appeared
(Mrs) Mary Kapuna Takemoto to me known to be the
person described in and who executed the foregoing instrument and acknowledged that she executed the same
as her free act and deed.


Notary Public, Honolulu Judicial Circuit,
Territory of Hawaii.
My Commission Expires June 30, 1945

(e) Interests, descent; certificate of occupation or homestead lease. In case of the death of any occupier or lessee under an existing certificate of occupation or existing homestead lease, all the interest of the occupier or lessee, any conveyance, devise, or bequest to the contrary notwithstanding, in land held by the decedent by virtue of such certificate of occupation or homestead lease shall vest in the relations of the decedent as follows:

- (1) In the widow or widower;
- (2) If there is no widow or widower, then in the children;
- (3) If there are no children, then in the widows or widowers of the children;
- (4) If there are no such widows or widowers, then in the grandchildren;
- (5) If there are no grandchildren, then in the parents or surviving parent;
- (6) If there are no parents or surviving parent, then in the sisters and brothers;
- (7) If there are no sisters and brothers, then in the widowers or widows of the sisters and brothers;
- (8) If there are no such widowers or widows, then in the nieces and nephews;
- (9) If there are no nieces or nephews, then in the widowers or widows of the nieces and nephews;
- (10) If there are no such widowers or widows, then in the grandchildren of the sisters and brothers;
- (11) If there are no grandchildren of any sister or brother, then in the State.

All the successors, except the State, shall be subject to the performance of the unperformed conditions of the certificate of occupation, or the homestead lease, in like manner as the decedent would have been subject to the performance if the decedent had continued alive; provided that if a widow or widower in whom the interest shall have vested, shall thereafter marry again and de cease leaving a widower or widow and a child or children of the first marriage surviving, the interest of the deceased shall vest in such child or children; and provided further that in case two or more persons succeed together to the interest of any occupier or lessee. according to the foregoing provisions, they shall hold the same by joint tenancy so long as two or more shall survive, but upon the death of the last survivor, the estate shall descend as provided above.

171-99(e), HRS
Pre June 6, 2000 version

EXHIBIT " C "

under the age of eighteen years, unless the minors are represented by statutory guardians; and provided further that any freeholder over the age of eighteen may assign the freeholder's interest to the freeholder's cotenants.

(d) Right of purchase lease; termination, forfeiture, or surrender. Upon the termination of a right of purchase lease by lapse of time, or upon the forfeiture or surrender of the lease or a freehold agreement, the board, in its discretion and within the limit of its authority, may open the premises or any part thereof for disposition in the manner or for the uses as provided in this chapter. Before the disposition, the fair market value thereof shall be established by appraisal. The value attributable to the improvements in the appraisal shall be paid to the surrendering lessees or freeholders, upon resale of the premises, and the director of finance shall pay the amount of the valuation upon the requisition of the board out of the funds.

(e) Assignment; certificate of occupation or homestead lease. No existing certificate of occupation or existing homestead lease, or fractional interest thereof, shall be transferable or assignable except by conveyance, devise, bequest, or intestate succession and with the prior approval of the board of land and natural resources; provided that transfer or assignment by conveyance, devise, or bequest shall be limited to a member or members of the occupier's or lessee's family.

For the purposes of this section, "family" means the spouse, reciprocal beneficiary, children, parents, siblings, grandparents, grandchildren, nieces, nephews, a parent's siblings, children of a parent's siblings, and grandchildren of a parent's siblings, of the occupier or lessee.

All the successors shall be subject to the performance of the unperformed conditions of the certificate of occupation or the homestead lease.

(f) Option of cotenant to compel others to buy or sell. In case two or more persons become cotenants under any existing right of purchase lease, certificate of occupation, or homestead lease by inheritance or otherwise, any one or more of the persons, less than the whole number, may file in the office of the land agent an offer to the remainder of the persons to buy their interest in the premises or to sell them their own interest therein at a stated price, according to the proportion of the respective interest in question, and may deposit with the land agent the amount of the offered price in money, with a fee of \$10. The land agent shall thereupon notify the persons to whom the offer is made of the nature of the offer and order them to file with the land agent their answer within sixty days whether they will buy or sell according to the offer. If the persons to whom the offer is made file with the land agent within sixty days of the time of their receiving the notification, their answer stating that they will sell their interest according to the terms of the offer, the land agent shall indorse the fact of the sale with the amount of the consideration on the lease and pay to the persons the amount of the consideration deposited with the land agent according to their individual interest; and the interest of the persons shall thereupon vest in the persons making the offer. The fact of the transfer shall be properly recorded in the official records of the land agent and indorsed upon the lease held by the lessee.

If, however, the persons to whom the offer is made fail to answer within sixty days from the time of their being notified of the offer or within sixty days from the time the notice of the offer [is] mailed to their last known place or places of abode, or shall answer within sixty days that they will buy the interest of the persons making the offer on the terms offered, but fail within sixty days after the notification to deposit the amount representing the value of the interest according to the terms offered, their interest shall vest in the persons making the offer and the amount of the consideration shall be paid by the land agent of them individually or their respective representatives upon application. In such case, the fact of the transfer shall be recorded and indorsed as above provided.